



CUB

CITIZENS UTILITY BOARD

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August 18, 2000

VIA FACSIMILE (312) 558-3308
AND REGULAR MAIL

Robert C. Feldmeier
Hopkins & Sutter
Three First National Plaza
Chicago, IL 60602-4205

Re: Discovery Disputes
ICC Docket No. 00-00361

Dear Robert:

This letter is in response to both your August 17, 2000 and August 18, 2000 letters regarding the outstanding discovery in the above-referenced case. I am writing to correct the misunderstandings reflected in your correspondence.

CUB propounded its Fifth and Sixth Sets of Data Requests on or about July 10, 2000 and July 13, 2000 respectively. According to your July 13, 2000 correspondence with Robert Ivanauskas, Com Ed was to provide its responses to items numbered 57 through 62 by August 2nd. Com Ed also agreed to provide a response to request number 56 by that date as well. Com Ed further agreed to "work to collect documents" responsive to request number 61. A plain reading of this letter does not indicate that these are the only responses that Com Ed will provide to CUB's fifth set of requests.

The July 24, 2000, correspondence to Mr. Ivanauskas clearly states Com Ed's understanding and agreement that it would produce responses to five specific requests "on or before August 7, 2000."

Com Ed failed to respond to either of the requests as agreed. To date, responses to the fifth set of data requests remain outstanding, while the responses to the sixth set were delivered yesterday afternoon. Moreover, the responses to items 79 and 80 of the sixth set state: "[t]he studies will be made available at a mutually agreeable time." Your offer to make these items available on Monday, August 21st a mere three days before the hearing, is simply unconscionable and discourteous.

You maintain that as a result of Mr. Ivanauskas' "departure no CUB attorney was assigned to the case" thereby preventing you from forwarding the documents. However, Mr. Ivanauskas did not officially leave CUB until Wednesday, August 9, 2000 -- a full week after ComEd was to produce its specific responses to the fifth data set and two days after Com Ed was to produce its responses to the sixth set. He was both available and in the office during the first

week of August. If there were any confusion as to his involvement in this case, a phone call to our office would have cleared it. Furthermore, I spoke with Walter Hazlitt on August 9th and specifically requested the overdue responses to both the fifth and sixth sets. He assured me that you were working on them. I phoned you on Friday, August 11th. When I phoned you on Monday, August 14th I again asked about the responses. It was in this conversation that you asked me to sign a confidentiality agreement. I did so the following morning upon my return to the office. Also during this conversation you stated that you were still in the process of reviewing the documents for privilege. It is simply not possible that you were at once waiting to determine who to send the documents to and still in the process of reviewing the same documents that you allege would have been delivered 12 days earlier had Mr. Ivanauskas still been working at CUB---which in fact he was.

I note also that while Com Ed was afforded three weeks, which have now become more than five weeks of response time, Com Ed has repeatedly requested that CUB's responses to Com Ed requests be delivered within one week.

CUB is not requesting that Com Ed produce "additional materials" as stated in your most recent letter. We are simply asking for the production of the documents that our witnesses need in order to fully prepare for and accurately testify at the upcoming hearings, the same documents that we initially requested in our fifth set of data requests. As a result of the time constraints now upon us, we reluctantly propose the following with respect to the fifth set of data requests: a) omit numbers 54, 63, 66, and 68; b) limit numbers 57-62 to those requested documents pertaining to Com Ed and Unicom (exclude PECO and/or Exelon); and c) limit number 67 to items a, b, c, and h (omit d, e, f and g). We are still requesting full production of all other documents requested in the fifth set including those that were promised in your July 13th letter.

In our earlier conversation, you offered to produce voluminous documents responsive to requests number 79 and 80 at the Downer's Grove office of Com Ed. These documents should have been offered to us weeks ago, not three days before the hearings are scheduled to begin. In light of the time constraints, we ask to review those documents Monday morning at a convenient location in Chicago.

Com Ed's actions, or lack thereof, have significantly hampered our witnesses' case preparation. In light of Com Ed's dilatory and prejudicial actions we feel it necessary to file a motion to compel and for extension of time. Please contact me regarding arrangements to review the documents.

Sincerely,


Karin M. Norington
Legal Counsel